

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

60422

FILE: B-185363

DATE: January 26, 1976

MATTER OF: Randall Manufacturing Company, Inc.  
(Reconsideration)

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## DIGEST:

1. Prior GAO decision that protest alleging improper use of negotiating authority is untimely is upheld notwithstanding fact that prior decision erroneously stated that award had been made prior to filing of protest, since protest was first filed after receipt of proposals and therefore was untimely in any event.
2. Protest alleging that contract was awarded to nonresponsible concern is not for consideration. While GAO will review protests involving agency determinations of nonresponsibility in order to provide assurance against arbitrary rejection of bids or proposals, affirmative determinations generally are not for review by GAO since such determinations are based in large measure on subjective judgments of agency officials.

By letter of December 12, 1975, Randall Manufacturing Company, Inc. (Randall) has requested reconsideration of our decision of December 10, 1975, B-185363, which concluded that Randall's protest alleging that the procurement should have been advertised was untimely since it was first filed after the closing date for receipt of proposals and after the award was made. Randall indicates, however, that its protest was filed prior to award. Randall now also alleges that the successful offeror (M.E. Baker) is not a responsible "bidder" for this negotiated procurement.

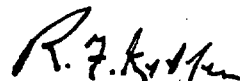
We incorrectly stated in our prior decision that an award had been made. It appears that an award was made to M.E. Baker Co. on or about December 16, 1975, under the protested solicitation. However, in our prior decision we also pointed out that section 20.2 (b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975) provides that protests based on alleged improprieties in a negotiated solicitation which are apparent prior to the closing date for receipt of initial proposals should be filed prior to the closing date for receipt of initial proposals. In the present instance, therefore, regardless of whether award had been made or not, the alleged defect

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was apparent to the protester prior to the closing date for receipt of proposals, and since Randall did not protest the alleged impropriety until after the closing date for receipt of initial proposals (nor until after the closing date for receipt of best and final proposals) its protest is untimely. Computer Machining Technology, B-181233, March 6, 1975, 75-1 CPD 134.

With regard to the allegation that M.E. Baker is not responsible, it should be noted that this Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of the procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, 54 Comp. Gen. 66 (1974). Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, this Office will continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids or proposals.

In the light of the above, we affirm our prior decision. Accordingly, the protest is dismissed.

  
Deputy Comptroller General  
of the United States